



## CITY OF LODI COUNCIL COMMUNICATION

**AGENDATITLE:** Set Public Hearing for June 2, 2010 to Consider the Appeal of Noe Juarez Luna Regarding the Decision of the Planning Commission to Deny a Use Permit for a Pool Hall/Nightclub at 651 North Cherokee Lane, Suite E

**MEETING DATE:** May 19, 2010

**PREPARED BY:** Community Development Director

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**RECOMMENDED ACTION:** Set public hearing for June 2, 2010 to consider the appeal of Noe Juarez Luna regarding the decision of the Planning Commission to deny a Use Permit for a pool hall/nightclub at 651 North Cherokee Lane, Suite E.

**BACKGROUND INFORMATION:** Pursuant to Lodi Municipal Code Section 17.72.110, Mr. Noe Juarez Luna filed an appeal regarding the decision of the Planning Commission of April 14, 2010 to deny a Use Permit for a pool hall/nightclub. The appeal was filed in a timely manner and the appropriate fee was paid. The City Council may now set the matter for a public hearing to consider the appeal. It is recommended that the matter may be heard at the regularly scheduled meeting of June 2, 2010.

**FISCAL IMPACT:** Not Applicable

**FUNDING AVAILABLE:** Not Applicable

  
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**Konradt Bartlam**  
Community Development Director

IB/kjc

**Attachments:**

1. Planning Commission Resolution PC 10-06
2. Staff Report from the February 10, 2010, Planning Commission meeting
3. Draft minutes for the February 10, 2010, Planning Commission meeting
4. Appeal letter

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**APPROVED:**

  
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Konradt Bartlam, Interim City Manager

**RESOLUTION NO. P.C. 10-09**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF LODI DENYING  
THE REQUEST OF THE NOE JUAREZ LUNA FOR USE PERMIT TO ALLOW ON-SALE BEER,  
WINE AND DISTILLED SPIRITS ALCOHOLIC BEVERAGE CONTROL LICENSE AND LIVE  
ENTERTAINMENT PERMIT AT 651 NORTH CHEROKEE LANE.**

**WHEREAS**, the Planning Commission of the City of Lodi has heretofore held a duly noticed public hearing, as required by law, on the requested Use Permit in accordance with the Government Code and Lodi Municipal Code Chapter 17.84, Amendments; and

**WHEREAS**, an application was filed by Noe Juarez Luna 1127 South Mills., Lodi, CA 95242; and

**WHEREAS**, the project site is located at 651 North Cherokee Lane, Suite E., Lodi, CA 95240; and

**WHEREAS**, the project site is owned by Kay Tayler Investment II LLC., 5466 Ridgeview Circle., Stockton, CA 95219-7190; and

**WHEREAS**, the property has a General Plan designation of GC, General Commercial and is zoned C-2, General Commercial; and

**WHEREAS**, the requested Use Permit to allow live entertainment in conjunction with the operation of a restaurant with a Type 48 On-sale General License and sale of alcohol is an enforcement action in accordance with the City of Lodi Zoning Ordinance; and

**WHEREAS**, Census Tract 45 in which the project site is located currently has over-concentrated of licenses allowing the sale of beer, wine and distilled spirits for consumption where sold; and

**WHEREAS**, because Census Tract 45 has an over concentration of off-sale wine, beer and distilled spirits licenses, the Planning Commission must make a finding of necessity and/or public convenience in order to permit the issuance of an additional off-sale Alcohol Beverage Control license in this tract; and

**WHEREAS**, the State Department of Alcoholic Beverage Control has training available that clearly communicates State law concerning the sale of alcoholic beverages.

**WHEREAS**, all legal prerequisites to the adoption of this Resolution have occurred; and

**NOW, THEREFORE, BE IT FOUND** that the Planning Commission of the City of Lodi incorporates the staff report and attachments, project file, testimony presented at the time of the hearing, and written comments, on this matter, and make the following findings:

1. The project was found to be Categorically Exempt according to the California Environmental Quality Act, Article 19 §15321, Class 21 (a) (2). The project is classified as an "Enforcement action by regulatory agencies" because it is the "adoption of an administrative decision or order enforcing or revoking the lease, permit, license, certificate, or entitlement for use or enforcing the general rule, standard, or objective." No significant environmental impacts are anticipated and no mitigation measures have been required.
2. Although the proposed Use Permit request is consistent with the City's General Plan and Zoning Ordinance, it will not facilitate orderly distribution of Alcoholic Beverage Control licenses within the City, in that there is a high concentration of existing Alcoholic Beverage Control on census tract 45 and there are similar bar type establishments in the immediate vicinity of the project area, and therefore, a new use offering the same services is not appropriate as it would further over-concentrate the subject census tract.
3. The proposed use is not consistent with the objectives of the Zoning Ordinance and the purposes of the district in which the use is located. Although a pool hall/billiard hall bar/nightclub is a permitted use in the General Commercial (C-2) zone, City of Lodi Municipal Code Section 17.73.020 (E) of the Zoning Ordinance requires a minimum of three hundred feet of buffer zone between residential and these types of establishments. This requirements is in effect to ensure any proposed project, including existing projects, must be compatible with surrounding land uses, including the protection of the quiet enjoyment of existing residential development, and reducing the level of adverse impacts on existing homeowners associations, or private property. City staff and the Lodi Police Department

have received complaints regarding the noise impacts of emanating from a bar similar to the proposed project located within proximity of the project site, outdoor loitering, and incompatible hours of operation that negatively impact the privacy and enjoyment of the residential neighborhood west of the applicant's tenant space. As proposed, the project will be detrimental to the health, morals, comfort and welfare of persons residing or working in the neighborhood of the proposed use, and to property or improvements in the neighborhood, and will be contrary to the general public welfare, and in violation of Lodi Municipal Code Section 17.72.080 of the Zoning Ordinance.

4. The proposed project is not compatible with the surrounding area, which is comprised of residential neighborhoods to the west, and the tenants of the commercial center. The residents located west of the applicant's tenant space are negatively affected by excessively disruptive noise occurring in a similar establishment located within the project vicinity (El Rancho Sports Bar) and loitering associated with the El Rancho Sports Bar. The proposed project would intensify these impacts.
5. The proposed use will be detrimental to the public health and safety, or welfare. The proposed live entertainment would be more than just an ancillary use, attracting more patrons to the bar and on-site loitering and noise impacts at late hours, and likely requiring more public safety service to try to maintain the required compatibility between the proposed project and the residential neighborhood to the west.
6. The proposed use will not comply with each of the applicable provisions of the Zoning Ordinance. The Lodi Municipal Code requires compatibility with existing and proposed surrounding land uses. The proposed nightclub use with live entertainment is not compatible with the adjacent residential neighborhood to the west, in that the proposed hours of live entertainment will negatively impact the privacy and quiet enjoyment of nearby residents.
7. The proposed use is not consistent with the goals, objectives, and policies of the General Plan. Policy 7 of the General Plan Noise Element defines residences are noise-sensitive land uses. The City's General Plan Policy 8 mandates the City deny projects classified as normally unacceptable projects and incompatible with adjacent land uses. A similar use next door, without live entertainment services, has proven to be incompatible with the adjacent residential neighborhood to the west regarding excessively loud noise, on-site loitering, and hours of operation. The proposed use of the tenant space as a nightclub will negatively intensify these impacts to the surrounding neighboring.
8. The sale of alcoholic beverages for on- and off-premise consumption as part of a hotel is a permitted use in the General Commercial (C-2) zoning district. The sale and consumption of alcohol can sometimes result in customer behavior problems that can require police intervention.

**NOW, THEREFORE, BE IT DETERMINED, AND RESOLVED,** that the Lodi Planning Commission hereby denies Use Permit Application No. 10-U-01.

Dated: April 14, 2010

I hereby certify that Resolution No. 10-09 was passed and adopted by the Planning Commission of the City of Lodi at a regular meeting held on April 14, 2010, by the following vote:

AYES: Commissioners: Hennecke, Kirsten, Kiser, Mattheis, and Chair Cummins

NOES: Commissioners: None

ABSENT: Commissioners: Heinitz and Olson

ATTEST:



Secretary, Planning Commission

**CITY OF LODI  
PLANNING COMMISSION  
Staff Report**

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**MEETING DATE:** April 14, 2010

**APPLICATION NO:** Use Permit: 10-U-01

**REQUEST:** Request for Planning Commission approval of a Use Permit to allow a Type 48 On-Sale General ABC license at 651 North Cherokee Lane, suite E. (Applicant: Noe Juarez Luna. File Number: 10-U-01.)

**LOCATION:** 651 North Cherokee Lane, Suite E., Lodi, CA. (APN: 041-274-51)

**PROPERTY OWNER:** Kay Tayler Investment II LLC., 5466 Ridgeview Circle., Stockton, CA 95219-7190

**APPLICANT:** Noe Juarez Luna., 1127 South Mills., Lodi, CA 95242.

**RECOMMENDATION**

Staff recommends the Planning Commission deny without prejudice the requested Use Permit based on findings in the attached resolution.

**PROJECT/AREA DESCRIPTION**

**General Plan Designation:** GC, General Commercial

**Zoning Designation:** C-2, General Commercial

**Property Size:** 2.56 Acres. The tenant space measures approximately 3,600 sq. ft.

The adjacent zoning and land use are as follows:

**North:** C-2, General Commercial. The existing uses north of the project site are a mixture of retail commercial, offices and service businesses.

**South:** C-2, General Commercial. There are a variety of commercial uses to the south, types of businesses found on Cherokee Lane.

**East:** State Highway 99 and a 24 recreational facility.

**West:** R-2, Single Family Residences. The area immediately west of the project site consists of single family residences. There is only approximately 75 ft of buffer zone between the commercial district (the project site) and the residences to the west.

Project Description

The owners of La Luna restaurant, currently located at 910 South Cherokee Lane, would like to move the restaurant to a neighborhood commercial center located at 651 North Cherokee Lane, Suite E and reopen the business as a billiard/pool hall featuring live music and dancing. The change in the nature of the business from a bone fide restaurant to the proposed use necessitates change in ABC license type. The restaurant currently owns a Type-47 On-Sale General (Restaurant) Alcoholic Beverage Control license. The applicant's proposed use requires a Type 48 On-Sale General-Public Premise – (bar, nightclub) license. Type 48 ABC license is typically issued to nightclubs. Both ABC licenses permit the sale of beer, wine and distilled spirits. The proposed hours of operation of the establishment will be from noon to 1:30 a.m. Monday-Saturday and from noon to 10:30 p.m. on Sundays.

In addition, the proposed establishment will have music, dancing and guest performers. Commercial amusements activities are required to obtain a Use Permit per Chapter 17.73 of the Municipal Code. Bars/dance clubs and places where primary receipt sales are from sale of alcohol and dancing have been interpreted to fall into this category. As proposed, music and dancing would occur on Thursday, Friday and Saturday evenings commencing at 9:00 pm until closing time.

Staff contacted the State Department of Alcoholic Beverage Control to verify the hours of operation and types of uses being proposed. According to ABC staff, the planned operation stated in their application is a tavern and live entertainment. Since the State Department of Alcoholic Beverage Control typically issue a Type 48 Alcoholic Beverage Control license to bars and nightclubs that offer commercial entertainment, staff has treated the applicant's project as a bar/nightclub.

## **SUMMARY**

The applicant, Mr. Noe Juarez Luna, is requesting a Use Permit approval to allow a Type 48 On-Sale General Public Premises (Bar, Night Club) license in conjunction with billiard hall/pool hall and live entertainment/dancing in the C-2, General Commercial zoning district. The applicant currently holds Type 47 On-Sale General Eating Place (Restaurant) license, which authorizes the sale of beer, wine and distilled spirits for consumption on the license premises. The proposed project site currently has an over-concentration of Alcoholic Beverage Control licenses. Findings of public necessity and/or convenience are required in order to approve additional license within the project census tract. The live entertainment portion of the request would consist of a band, single performers, a disc jockey (DJ), karaoke, and an associated dancing area. The applicant was previously granted a Use Permit by the Planning Commission to conduct live entertainment on Friday and Saturday nights at their current location.

## **BACKGROUND**

The applicant, Mr. Noe Juarez Luna, owns and operates La Luna Restaurant located at 910 South Cherokee Lane. The restaurant obtained Type 47 On-Sale General license some 24 years ago, prior to implementation of the City's Use Permit requirements. In the summer of 2008, the applicant requested a Use Permit to allow live entertainment at the restaurant on limited basis. At their regular hearing of August 27, 2008, the Planning Commission approved the Use Permit request to allow live entertainment.

Staff met with the applicant on at least three occasions (February 4 and 24, 2010 and March 16, 2010) to clarify issues relating to the proposed project. The applicant also met with the Police Department on February 24, 2010. The majority of issues were resolved during the February 24, 2010, meeting regarding the project description and the City's requirements for establishments that wish to offer live entertainment as the main service. It was made clear to the applicant during the February 24, 2010 meeting that the change in the nature of the business requires changing his Type 47 ABC license to Type 48 (bar/night club) ABC license and, as such, the project site isn't suitable for a bar/nightclub offering live entertainment. During the meeting of March 16, 2010, the applicant provided hours of operation and the types of entertainment likely to be featured. Staff again made it clear that the Police Department has expressed concerns relating to noise and City staff also pointed out the proposed use violates the Live Entertainment Ordinance due to proximity of the residences to the project site (LMC 17.73). The applicant was made aware the project site is not acceptable for a bar/tavern or a pool/billiard hall with live entertainment. It was made clear to the applicant staff intended to recommend denial of the application.

The project site is zoned commercial and contains a variety of businesses, including eating establishments and offices. A church formerly occupied one of the tenant spaces but has since vacated the premise. The project suite was previously used by Blue Shield as a satellite office and is currently is vacant. The zoning designation allows the proposed use subject to a Use Permit review and approval by the Planning Commission.

## **ANALYSIS**

Site Layout: The subject site is within a neighborhood commercial center located at 651 North Cherokee Lane, Suite E. The shopping center consists of two buildings situated along the south and west perimeter. The shopping center is bounded by Pioneer Drive on the north, by Cherokee Lane on the east, by commercial parcels on the south and by single-family residences on west. Standard parking stalls and a drive isle separate the residences from the commercial buildings. The project tenant space is located at the west end of the southern building, the closest point to the single family residences (see Attachment C). The building stands less than 75 feet away from the adjoining residential properties. No modifications to the site are proposed with this application. The neighborhood commercial center currently contains eating establishments, a church and several vacant suites. There is no active live entertainment permit within the neighborhood commercial center.

Floor Plan: The existing floor plan consists of bathrooms, a kitchen (break room) and open tenant space. It was previously used as a satellite office by Blue Shield. The proposed floor plan consists of a stage, dance floor, removable chairs, a bar, storage rooms, office and billiard/pool tables. Primary features of the proposed floor plan is a bar, audio/stage area and dance floor.

Parking/Circulation: The site contains two parking lots. The main parking lot contains 117 spaces. There is a smaller parking lot located west of the buildings (adjacent to the single family residences) and it contains 30 spaces. The main parking lot is accessible from Pioneer Drive and Cherokee Lane and the secondary parking spaces are accessible from Pioneer Drive. Parking requirements for neighborhood commercial centers are based on a flat rate for all uses in the center, and not by describing each use in the center individually, unless the center has a high concentration of uses with similar peak hours of operation.

Commercial Entertainment: The establishment, called La Luna, will be a full bar with entertainment on Thursday, Friday, and Saturday nights from 9:45 p.m. until 1:30 a.m. For entertainment there will be a "DJ", open microphone night, comedians, single musicians and singers, juke box, amplified music, live entertainment, karaoke, patron dancing, and pool/billiard tables. The proposed uses appear to indicate that the intent of the business is to function primarily as a *bar/nightclub*. In accordance with the requirements of the State Department of Alcoholic Beverage Control, the applicant will not allow patrons under 21 years of age in the establishment.

### Project Review and Comments:

The applicant's project was referred to the Police, Fire and Building Departments for review and recommendation. The key issues related to approval of a billiard/pool halls, bars, taverns, and nightclubs involve the appropriateness of the location and whether or not such establishments can operate without detriment to nearby residential uses and general welfare of the surrounding area. As stated above, the site is located within a C-2 (General Commercial) zoning district and abuts residences to the west (see attachment B). The subject property has historically operated as an office but has been vacant for some time. Bars are a permitted use in the C-2 zoning district. However, there are no bars or other establishments within this neighborhood commercial center that provide live entertainment services due to site incompatibility. The nearest residences are located less than 75 ft from the project site.

The City's Police Department has reviewed this request as well as activities related to similar uses in the immediate vicinity. The Police Department currently receives numerous noise and public disturbance complaints from neighboring residents as a result of activity occurring at the El Rancho Sports Lounge, located at 621 North Cherokee Lane (see attachment E). In addition to the noise produced by the music, neighboring residents have also complained of noise caused by patrons.

The Police Department believes that noise and/or public disturbance complaints would increase with approval of the proposed project.

Although bars, billiard/pool halls and live entertainment establishments are conditionally permitted in a C-2 zoned property, Lodi Police Department believes, and staff concurs, that the proposed project would result in an intensification of existing problems and continue to negatively impact the adjoining residential properties. Entertainment establishments that are not properly operated can create an environment with the potential for excessive noise generation and disorderly conduct by patrons, particularly at closing times, with resultant adverse public safety impacts on the surrounding businesses and residential communities. This has occurred with other similar establishment near the project site in the past. The City has experienced a number of serious problems related to patron conduct and lack of effective management at various bars with live entertainment venues throughout the City. Other problems experienced include public drunkenness, vandalism of cars and businesses, public urination and other illegal and disruptive activities. The applicants have indicated there will be no separate private security company hired for purposes of policing the project as they anticipate overseeing security arrangements themselves. Staff feels this would be inadequate and could contribute to unruly behavior by their patrons and could create additional problems for the Police Department. The Police Department have had to spend an inordinate amount of time responding to calls from the El Rancho Sports Bar to prevent and control major disturbances, which has affected other areas of the City by depleting the availability of police resources.

Staff recommends the Planning Commission deny the Use Permit request as the existing and proposed conditions do not mitigate all the concerns of incompatibility between the residential and commercial uses. As shown in the site plan, the project site is within less than 75 ft of adjoining single family residential properties whereas the LMC Sec. 17.73.020(E) requires a minimum of three hundred feet buffer zone between residential properties and nightclubs. Staff believes the project site is too close to residences, creating an incompatible mix of land uses. Staff anticipates noise from the proposed billiard hall/pool hall, tavern, nightclub to adversely impact nearby residences. According to Section 17.72.070 of the Zoning Ordinance, Use Permit may be approved if the Planning Commission can make the following finding:

In granting any use permit, the Planning Commission shall find that the establishment, maintenance or conducting of the use will not, under the circumstances of the particular case, be detrimental to the health, morals, comfort or welfare of persons residing or working in the neighborhood of the proposed use, or to property or improvements in the neighborhood, or will not be contrary to the general public welfare (LMC 17.72.080).

In staff's opinion, the finding necessary to approve the Use Permit request cannot be made as proposed. In the past, the City has approved commercial entertainment establishments that offer live performances by musicians, comedians and other similar acts. Staff finds that the Downtown is a favorable location for clubs and entertainment venues. Locations like Downtown have fewer residents that could be adversely impacted by late night activities; those that chose to live downtown are typically cognizant of the fact that these types of uses congregate around the downtown core; there is adequate parking in parking lots and on the street, particularly late at night; a late night business in the downtown is less likely to impact surrounding businesses since most are closed at night; and a restaurant/nightclub/bar can compliment the other restaurants and bars in the downtown, creating a dining and entertainment center for Lodi. Staff has suggested to the applicant to consider another location for the project, but the applicant has indicated the project site is the area of their interest.

Section 17.72.040 of the Lodi Municipal Code requires a Use Permit for new Off-Sale and On-Sale alcohol licenses as well as changes in license type. The City established the Use Permit requirement to gain local control over whether or not a license is appropriate for a particular location. The State

Department of Alcoholic Beverage Control primarily controls issuance based on concentration of licenses within a particular Census Tract. Census Tract 45 covers the area south of the Mokelumne River, north of Lodi Avenue, east of the Union Pacific Rail Road (U.P.R.R), and west of Guild Avenue. According to ABC, Census Tract 45 contains 14 existing ABC licenses with 7 on-sale licenses allowed based on the ABC criteria. The commercial complex where the proposed project is located currently has 1 Type-41 ABC licenses (Pizza World and Taqueria Casa Mexicana both hold on-sale beer and wine licenses). Because this census tract is over-concentrated, the Planning Commission must make a finding of public necessity or convenience in order to approve an additional ABC license. Staff feels there is no justification to make a finding of public necessity or convenience due to possible alcohol related problems this establishment could create to the area in general and nearby residences in particular. This particular census tract has abundance of On and Off sale general ABC licenses. Denial of this transfer request would not unnecessarily create inconvenience to the public.

The Fire Department notes the assembly type uses, such as banquet halls, night clubs, taverns and bars, require installation of hood above all cooking appliances, automatic sprinkler system throughout the tenant space, and installation of fire alarm system that meets the California Fire Code. The Fire Department also notes that maximum room occupancy would need to be recalculated due to change in use from office to an assembly and a fire control room must be provided. The applicant was informed of the City's requirements at the meeting of March 16, 2010.

Staff is recommending denial for the proposed project because findings necessary to approve the proposed project cannot be made. Although staff recognizes the need for a thriving business to expand, the proposed project is incompatible with the abutting residential neighborhood. As the Police Department noted, there is a history of incompatibility between an existing bar near the project site and the adjoining residences. Staff believes that the proposed project would have a negative impact to the site and the surrounding residential neighborhood. The neighborhood commercial center currently contains two eating establishments, a church and offices. Approval of the proposed use would lead to increased calls for services to the Police Department, create problems for the tenants of the neighborhood shopping center, and cause problems to the surrounding residences. In order to grant a Use Permit, the Planning Commission is given an opportunity to require conditions, and/or to approve or deny such proposals. In approving a Use Permit, the Planning Commission must make a finding that the proposed project will not, under the circumstances of the particular case, be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood and that such proposed project will not be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City. Staff is of the opinion such findings cannot be made in this case. As a result of the Police Department's concerns, coupled with the land use incompatibility, staff is requesting that the Planning Commission deny the proposed project in its entirety. The applicant has been advised on numerous occasions the project site is incompatible with the proposed project and staff recommends denial of the project as submitted.

### **ENVIRONMENTAL ASSESSMENTS**

The project was found to be Categorically Exempt according to the California Environmental Quality Act, Article 19 §15321, Class 21 (a) (2). The project is classified as an "Enforcement action by regulatory agencies" because it is the "adoption of an administrative decision or order enforcing or revoking the lease, permit, license, certificate, or entitlement for use or enforcing the general rule, standard, or objective." No significant environmental impacts are anticipated and no mitigation measures have been required.

### **PUBLIC HEARING NOTICE:**

Legal Notice for the Use Permit was published on March 31, 2010. 54 public hearing notices were sent to all property owners of record within a 300-foot radius of the project site as required by

California State Law §65091 (a) 3. Public notice also was mailed to interested parties who had expressed their interest of the project. No protest letter has been received.

**ALTERNATIVE PLANNING COMMISSION ACTIONS:**

- Approve with additional/different conditions
- Deny the SPARC request
- Continue the request

Respectfully Submitted,

Concur,

Immanuel Bereket  
Assistant Planner

Konradt Bartlam  
Community Development Director

**ATTACHMENTS**

- A. Vicinity Map
- B. Aerial Photo
- C. Site Plan
- D. Floor Plan
- E. Police Department Comment
- F. Resolution

**LODI PLANNING COMMISSION  
REGULAR COMMISSION MEETING  
CARNEGIE FORUM, 305 WEST PINE STREET  
WEDNESDAY, APRIL 14, 2010**

**I - CALL TO ORDER / ROLL CALL**

The Regular Planning Commission meeting of April 14, 2010, was called to order by Chair Cummins at 7:00 p.m.

Present: Planning Commissioners – Hennecke, Kirsten, Kiser, Mattheis, and Chair Cummins

Absent: Planning Commissioners – Heinitz and Olson

Also Present: Community Development Director Konradt Bartlam, Assistant Planner Immanuel Bereket, Deputy City Attorney Janice Magdich, and Administrative Secretary Kari Chadwick

**2. MINUTES**

"March 24, 2010

**MOTION/VOTE:**

The Planning Commission, on motion of Commissioner Kirsten, Kiser second, approved the Minutes of March 24, 2010 as written. (Commissioner Mattheis abstained due to his absence from the subject meeting)

**3. PUBLIC HEARINGS**

- a) Notice thereof having been published according to law, an affidavit of which publication is on file in the Community Development Department, Chair Cummins called for the public hearing to consider the request for a variance to increase the size of a second dwelling unit from 400 square feet to 672 square feet at 1320 South Washington Street.

Assistant Planner Bereket gave a brief PowerPoint presentation based on the staff report. Mr. Bereket pointed out the email received by Mr. and Mrs. Daniels expressing their concerns. Staff is recommending approval of this application

Commissioner Kirsten asked if the applicant did the work. Mr. Bereket stated that he did not.

**Hearings Opened to the Public**

- Hazoor Shah, applicant, came forward to answer questions.
- Commissioner Kirsten asked if the unpermitted work was disclosed at the time of the purchase. Mr. Shah stated that he was told that the work may have been done without permits.

**Public Portion of Hearings Closed**

**MOTION/ VOTE:**

The Planning Commission, on motion of Commissioner Kirsten, Kiser second, approved the request of the Planning Commission for a variance to increase the size of a second

dwelling unit from 400 square feet to 672 square feet located at 1321 South Washington Street subject to the conditions in the attached resolution. The motion carried by the following vote:

Ayes: Commissioners– Hennecke, Kirsten, Kiser, Mattheis, and Chair Cummins  
Noes: Commissioners– None  
Absent: Commissioners– Heinitz and Olson

- b) Notice thereof having been published according to law, an affidavit of which publication is on file in the Community Development Department, Chair Cummins called for the public hearing to consider the request for a Use Permit to allow a Type 48 On-Sale General ABC license at 651 North Cherokee Lane, Suite E.

Assistant Planner Bereket gave a brief PowerPoint presentation based on the staff report. Mr. Bereket stated that the findings should be taken from the resolution on the Blue Sheet. Staff is recommending denial of this application.

Vice Chair Hennecke asked if the applicant is asking for a 300 foot waiver. Mr. Bereket stated that the applicant is asking for the Planning Commission to ignore that condition.

Hearing Opened to the Public

- Noe Juarez Luna, applicant, came forward to ask for a chance to prove that he can operate this business at this location without disturbing the residential neighbors.
- Chair Cummins asked how far away the current location is from this location. Mr. Luna stated that it is next door to this project. Mr. Bereket pointed out the location on the map.
- Commissioner Kirsten stated that he can appreciate Mr. Luna's situation and the desire he has to stay in business, but if the Planning Commission approves a project like this it could set a precedence that may end up reflecting badly on them. The Commission has to consider the surrounding residences and the opinion of staff. The 300 foot buffer is there for a reason. Mr. Luna stated that he is not going to use the back parking lot for customer parking. This should help avoid noise being next to the residences. Mr. Bartlam stated that one of the concerns staff had was that back parking lot and the fact that it can not be seen easily by police patrol. Kirsten asked if Mr. Luna talked with the Police Department before applying. Mr. Luna stated that he did and the officer he spoke to stated that the Police Department does not reject projects they only make recommendations.
- Commissioner Kiser stated that he understands what Mr. Luna is going through, but he still has to consider the surrounding area. He would like to see the project in a different location. Mr. Luna stated that he has spoken with the residents that border the project site and they do not have a problem with the project. The problem with the El Rancho is that the space is too small and people filter outside and leave the doors open.
- Hennecke asked staff to update the Commission on what type of license the El Rancho has. Mr. Bartlam stated that the El Rancho has the same type of license that Mr. Luna is asking for. Hennecke asked how far the residential area is from the El Rancho. Mr. Bartlam stated that the building is 200 to 250 feet from the residential zone. The 300 foot mark was established because of past experiences and staff is confident that it is a fair distance.
- Chair Cummins asked if Mr. Luna currently holds a beer and wine license with the restaurant. Mr. Luna stated that he does hold a beer and wine license, but the

restaurant didn't do well. Commissioner Kiser stated that the license was good at a different location. Mr. Bartlam stated that the difference between the two locations is the current location is a restaurant and the proposed is not. There will be a completely different atmosphere from an establishment that serves food with alcohol and what is essentially going to be a nightclub/bar.

- Gloria Juarez, Sonora Avenue resident which is directly behind the project location, came forward to object to the project. She stated that she did not speak with Mr. Luna. This project is too close to her home.

Public Portion of Hearing Closed

- Commissioner Kirsten stated that he would like to see Mr. Luna try opening this business in another location.

MOTION / VOTE:

The Planning Commission, on motion of Commissioner Kirsten, Kiser second, denied the request of the Planning Commission for a Use Permit to allow a Type 48 On-Sale General ABC license at 651 North Cherokee Lane, Suite E subject to the conditions in the attached resolution. The motion carried by the following vote:

Ayes: Commissioners – Hennecke, Kirsten, Kiser, Mattheis, and Chair Cummins

Noes: Commissioners – None

Absent: Commissioners – Heinitz and Olson

4. PLANNING MATTERS/FOLLOW-UP ITEMS

None

5. ANNOUNCEMENTS AND CORRESPONDENCE

None

6. ACTIONS OF THE CITY COUNCIL

Director Bartlam referenced the memo in the packet and stated that staff is available for questions. He also stated that the City Council adopted the General Plan last week unanimously. The Housing Element should be made available to the Commission in the near future. Mr. Bartlam also announced that he has taken on the Interim City Manager's position, but will continue his duties with the Community Development Department.

7. GENERAL PLAN UPDATE/DEVELOPMENT CODE UPDATE

Director Bartlam stated that staff has provided a letter that was received recently from the Farm Bureau. It is the only correspondence received since the Planning Commission's recommendation. Staff is working on the new zoning map and the new zoning code will be brought to the Commission for final say.

8. ACTIONS OF THE SITE PLAN AND ARCHITECTURAL REVIEW COMMITTEE

None

9. ART IN PUBLIC PLACES

Commissioner Kirsten updated the Commission on the Crane Sculpture situation.

10. COMMENTS BY THE PUBLIC

None

**■ ■ .** COMMENTS BY STAFF AND COMMISSIONERS

Director Bartlam asked if the Commission would please close the meeting in memory of Commissioner Olson's Mother who passed away this week.

**12.** ADJOURNMENT

There being no further business to come before the Planning Commission, the meeting was adjourned at 7:45 p.m.

ATTEST:

Konradt Bartlam  
Planning Commission Secretary

RECEIVED

2010 APR 19 PM 2:32

CITY CLERK  
CITY OF LODI

April 16, 2010

To: Planning Commission

From: Noe Juarez Luna

Re: Appellation Notice

I disagreed with the decisions of the Planning Commission and am taking action with my right to appeal. Code Section 17.72.110.

I, Noe Juarez Luna, am writing this letter in accordance to the Planning Commission Action that was rejected, I believe that my request should be carefully reviewed and re considered. I hope to see my papers reviewed and hope to see some progress towards my request. I wanted to note that in the year of 2008 I also filed for this same request at a different location, the city and the council gave me the opportunity to start working and approval this for six months and after those six months they gave me my permanent license. I hope to see that you give me the same opportunity to prove to the city of Lodi and Council that I am capable of handling my business properly. Thank you for your time and consideration any questions please contact me (209) 608-7344.

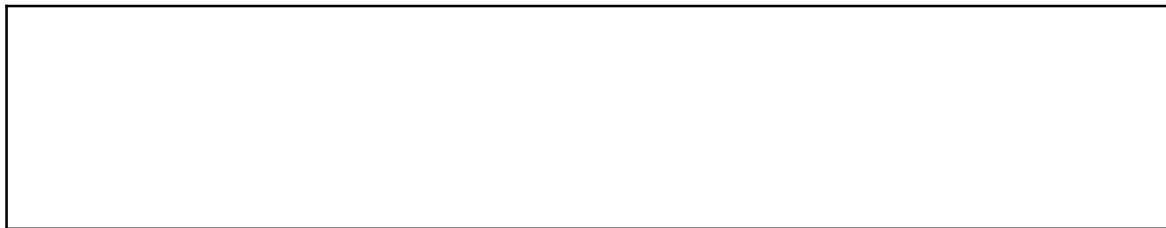
With this appeal letter are attached my license permit and some other recommendations.

Sincerely,

Noe Juarez Luna



CARNEGIE FORUM 305 WEST PINE STREET LODI, CALIFORNIA	<b>AGENDA</b> <b>LODI</b> <b>PLANNING COMMISSION</b>	REGULAR SESSION WEDNESDAY, APRIL 14, 2010 @ 7:00 PM
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1. ROLLCALL
2. MINUTES – “March 24, 2010”
3. PUBLIC HEARINGS
  - a. Request for Planning Commission approval of a variance to increase the size of a second dwelling unit from 400 square feet to 672 square feet. (Applicant: Hazoor Shah; File #: 10-A-01).
  - b. Request for Planning Commission approval of a Use Permit to allow a Type 48 On-Sale General ABC license at 651 North Cherokee Lane, Suite E. (Applicant: Noe Juarez Luna. File Number: 10-U-01)

**NOTE: The above items are quasi-judicial hearings and require disclosure of ex parte communications as set forth in Resolution No. 2006-31**

4. PLANNING MATTERS/FOLLOW-UP ITEMS
5. ANNOUNCEMENTS AND CORRESPONDENCE
6. ACTIONS OF THE CITY COUNCIL
  - a. Council Summary Memo
7. GENERAL, PLAN UPDATE/DEVELOPMENT CODE UPDATE
8. ACTIONS OF THE SITE PLAN AND ARCHITECTURAL REVIEW COMMITTEE
9. ART IN PUBLIC PLACES
10. COMMENTS BY THE PUBLIC
11. COMMENTS BY THE PLANNING COMMISSIONERS & STAFF
12. ADJOURNMENT

*Pursuant to Section 54954.2(a) of the Government Code of the State of California, this agenda was posted at least 72 hours in advance of the scheduled meeting at a public place freely accessible to the public 24 hours a day.*

CITY COUNCIL

LARRY D. HANSEN, Mayor

PHIL KATZAKIAN,

Mayor Pro Tempore

SUSAN HITCHCOCK

BOB JOHNSON

JOANNE MOUNCE

# CITY OF LODI

Community Development Department

CITY HALL, 221 WEST PINE STREET

P.O. BOX 3006

LODI, CALIFORNIA 95241-1910

(209) 333-6714 - Building

(209) 333-6711 - Planning & Community Improv

(209) 333-6842 - Fax

[www.lodi.gov](http://www.lodi.gov)

BLAIR KING, City Manager

RANDI JOHL, City Clerk

D. **STEPHEN** SCHWABAUER  
City Attorney

January 21, 2009

Noe Juarez Luna  
1127 South Mills Avenue  
Lodi, CA 95242

Subject: La Luna live entertainment permit – 910 S. Cherokee Lane

Mr. Luna:

The La Luna Restaurant was granted a Live Entertainment Use Permit on August 27, 2008 that allows live music and dancing on a limited basis in conjunction with the operation of a sit-down restaurant. The Use Permit was granted with a number of conditions that were intended to make the operation more compatible with the surrounding neighborhood. This letter is to notify you that City has received complaints regarding the live entertainment activities of your business. The Police Department has received several complaints regarding noise, exceeding the customer capacity of the building and the presence of juveniles during live entertainment hours.

I am including a copy of the some of the relevant conditions of approval for your live entertainment permit that we think you may be in violation. They include the following:

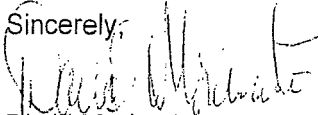
1. No one under the age of twenty-one (21) years of age shall be allowed in the premise after the hours of 9:30 pm during Live Entertainment nights on Friday and Saturday.
2. Noise emanating from the property shall be within the limitations prescribed by the City's Noise Ordinance and shall not create a nuisance to surrounding residential neighborhoods and/or commercial establishments. Exterior doors of the restaurant shall remain closed with the exception of ingress and egress during periods of live entertainment and dancing.
3. Live entertainment shall be limited to Friday and Saturday evenings between the hours of 9:30 pm and midnight, and shall be limited to the interior of the building as delineated by the floor plan submitted to the Planning Commission.
4. Within 6-months of the date of the start of live entertainment a noticed Public Hearing shall be held to review the status of the operation and any concerns or problems.

You should take note of these conditions and make sure that you are complying with all of them. In particular you should make sure that there are not any minors (persons under 21-years of age) in the establishment after 9:30 pm when live entertainment is taking place. You must also keep noise at a level that does not exceed the City Noise Ordinance. Generally, this means that noise should not be so loud as to bother people

on surrounding properties, particularly any nearby residences. This may require turning down any music or singing so it can not be heard outside of the building. Finally, you must make sure that you do not exceed the capacity of the restaurant as determined by the Lodi Fire Marshal. The number of people allowed in the building should be posted somewhere in the building.

You should resolve all of these problems before the time of your next public hearing to review your permit. If the Planning commission feels that you are not complying with the conditions of your Use Permit, they can modify or revoke your Live Entertainment Permit. We hope we can have your cooperation in this matter.

Sincerely,



David Morimoto  
Senior Planner

CC: Sgt. Martinez, Lodi Police Dept.  
Immanuel Bereket, Planner

# CITY OF LODI



## CITY COUNCIL

JOANNE MOUNCE, Mayor  
LARRY D. HANSEN,  
Mayor Pro Tempore  
SUSAN HITCHCOCK  
BOB JOHNSON  
PHIL KATZAKIAN

## COMMUNITY DEVELOPMENT DEPARTMENT PLANNING DIVISION

CITY HALL, 221 WEST PINE STREET  
P.O. BOX 3006  
LODI, CALIFORNIA 95241-1910  
(209) 333-6711 / FAX (209) 333-6842  
[www.lodi.gov](http://www.lodi.gov)

BLAIR KING, City Manager

RANDI JOHL, City Clerk

D. STEPHEN SCHWABAUER,  
City Attorney

RANDY HATCH,  
Director, Community Development

September 11, 2008

Noe Juarez Luna  
1127 South Mills Avenue  
Lodi, CA 95242

SUBJECT: use permit application: 08-U-09  
La Luna live entertainment Conditional Use Permit  
910 South Cherokee Lane, Lodi.

Dear Mr. Luna:

At its meeting of Wednesday, August 27, 2008, the Lodi City Planning Commission approved your request for a Use Permit to allow Live Entertainment and Dancing at the La Luna Restaurant located at 910 South Cherokee Lane, Lodi.

The Planning Commission's approval is based on the findings and conditions set forth by Resolution No. PC 08-22 (enclosed). Please note that condition 5 requires review of your Use Permit 6-months after your first live entertainment and dancing event. The review is a "noticed" public hearing, which is subject to payment of application fees. You must notify the Community Development Department when your first live entertainment and dancing event will be held. Furthermore, condition 6 requires that at least two security people shall be present during live entertainment hours.

Should you have any question, please feel free to contact this office at the address or phone number listed above.

Sincerely,

A handwritten signature in black ink, appearing to read "Immanuel Bereket", written over a horizontal line.

Immanuel Bereket  
Assistant Planner



***Please immediately confirm receipt  
of this fax by calling 333-6702***

CITY OF LODI  
P. O. BOX 3006  
LODI, CALIFORNIA 95241-1910

**ADVERTISING INSTRUCTIONS**

**SUBJECT:** PUBLIC HEARING TO CONSIDER APPEAL OF NOE JUAREZ LUNA  
REGARDING THE DECISION OF THE PLANNING COMMISSION TO  
DENY A USE PERMIT FOR A POOL HALL/NIGHTCLUB AT 651 NORTH  
CHEROKEE LANE, SUITE E

**PUBLISH DATE:** SATURDAY, MAY 22, 2010

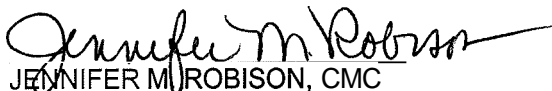
**LEGAL AD**

**TEAR SHEETS WANTED:** One (1) please

**SEND AFFIDAVIT AND BILL TO:** RANDI JOHL, CITY CLERK  
City of Lodi  
P.O. Box 3006  
Lodi, CA 95241-1910

**DATED:** THURSDAY, MAY 20, 2010

**ORDERED BY:** RANDI JOHL  
CITY CLERK

  
JENNIFER M. ROBISON, CMC  
ASSISTANT CITY CLERK

\_\_\_\_\_  
MARIA BECERRA  
ADMINISTRATIVE CLERK

**Verify Appearance of this Legal in the Newspaper – Copy to File**

Faxed to the Sentinel at 369-1084 at 3:45pm (time) on 5/20/10 (date) 2 (pages)  
LNS \_\_\_\_\_ Phoned to confirm receipt of all pages at \_\_\_\_\_ (time) JMR \_\_\_\_\_ CF \_\_\_\_\_ MB (initials)



## **DECLARATION OF POSTING**

### **PUBLIC HEARING TO CONSIDER APPEAL OF NOE JUAREZ LUNA REGARDING THE DECISION OF THE PLANNING COMMISSION TO DENY A USE PERMIT FOR A POOL HALL/NIGHTCLUB AT 651 NORTH CHEROKEE LANE, SUITE E**

On Friday, May 21, 2010, in the City of Lodi, San Joaquin County, California, a Notice of Public Hearing to consider appeal of Noe Juarez Luna regarding the decision of the Planning Commission to deny a Use Permit for a pool hall/nightclub at 651 North Cherokee Lane, Suite E (attached and marked as Exhibit A) was posted at the following locations:

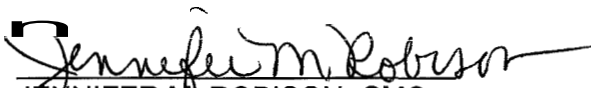
Lodi Public Library  
Lodi City Clerk's Office  
Lodi City Hall Lobby  
Lodi Carnegie Forum

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 21, 2010, at Lodi, California.

ORDERED BY:

**RANDI JOHL**  
**CITY CLERK**

  
JENNIFER M. ROBISON, CMC  
ASSISTANT CITY CLERK

\_\_\_\_\_  
MARIA BECERRA  
ADMINISTRATIVE CLERK



## **DECLARATION OF MAILING**

### **PUBLIC HEARING TO CONSIDER APPEAL OF NOE JUAREZ LUNA REGARDING THE DECISION OF THE PLANNING COMMISSION TO DENY A USE PERMIT FOR A POOL HALL/NIGHTCLUB AT 651 NORTH CHEROKEE LANE, SUITE E**

On Friday, May 21, 2010, in the City of Lodi, San Joaquin County, California, I deposited in the United States mail, envelopes with first-class postage prepaid thereon, containing a Notice of Public Hearing to consider appeal of Noe Juarez Luna regarding the decision of the Planning Commission to deny a Use Permit for a pool hall/nightclub at 651 North Cherokee Lane, Suite E, attached hereto Marked Exhibit A. The mailing list for said matter is attached hereto, marked Exhibit B.

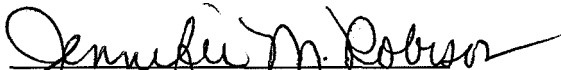
There is a regular daily communication by mail between the City of Lodi, California, and the places to which said envelopes were addressed.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 21, 2010, at Lodi, California.

ORDERED BY:

**RANDI JOHL**  
**CITY CLERK, CITY OF LODI**

  
JENNIFER M. ROBISON, CMC  
ASSISTANT CITY CLERK

\_\_\_\_\_  
MARIA BECERW  
ADMINISTRATIVE CLERK



## CITY OF LODI

**Carnegie Forum**  
305 West Pine Street, Lodi

### NOTICE OF PUBLIC HEARING

**Date: June 2, 2010**

**Time: 7:00 p.m.**

For information regarding this notice please contact:

**Randi Johl**

**City Clerk**

**Telephone: (209) 333-6702**

**EXHIBIT A**

### TICE OF IC HEARING

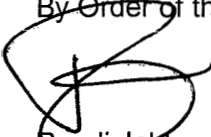
**NOTICE IS HEREBY GIVEN** that on **Wednesday, June 2, 2010**, at the hour of 7:00 p.m., or as soon thereafter as the matter may be heard, the City Council will conduct a public hearing at the Carnegie Forum, 305 West Pine Street, Lodi, to consider the following item:

- a) Appeal of Noe Juarez Luna regarding the decision of the Planning Commission to deny a Use Permit for a pool hall/nightclub at 651 North Cherokee Lane, Suite E.**

Information regarding this item may be obtained in the Community Development Department, 221 West Pine Street, Lodi, (209) 333-6711. All interested persons are invited to present their views and comments on this matter. Written statements may be filed with the City Clerk, City Hall, 221 West Pine Street, 2<sup>nd</sup> Floor, Lodi, 95240, at any time prior to the hearing scheduled herein, and oral statements may be made at said hearing.

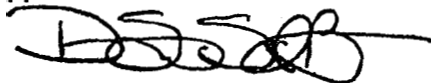
If you challenge the subject matter in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice or in written correspondence delivered to the City Clerk, 221 West Pine Street, at or prior to the close of the public hearing.

By Order of the Lodi City Council:

  
Randi Johl  
City Clerk

**Dated: May 19, 2010**

Approved as to form:



D. Stephen Schwabauer  
City Attorney

OWNER	ADDRESS	CITY	STATE	ZIP
GONZALEZ, CESAR & LORI K	720 GOLDEN AVE	LODI	CA	95240
AGANS, HAROLD L	712 N GOLDEN AVE	LODI	CA	95240
III & SHEIL	SACRAMENTO RD			
KANDOLA, SUDAGAR S	9632 WESTSIDE BLVD	ATWATER	CA	95301
RODRIGUEZ, PABLO & CELINA	713 GOLDEN AVE	LODI	CA	95240
PRIEST, GREG	451 PIONEER DR	LODI	CA	95240
LOEBS, WILMA H	457 PIONEER DR	LODI	CA	95240
WEBER, CHARLES	463 PIONEER DR	LODI	CA	95240
MIRANDA. ERASTO	444 PIONEER DR	LODI	CA	95240
MOLINA, JOSE	441 CONCORD ST	LODI	CA	95240
CAPPELLETTI, JUDDSON & SHANDRA	PO BOX 396	HARDEEVILLE	SC	29927
MOLINA, CARMEN & M ETAL	437 SONORA AVE	LODI	CA	95240
NAVA, NEPOMUCENO & MARIA DE JE	456 PIONEER DR	LODI	CA	95240
ANAYA, BARBARA	441 SONORA AVE	LODI	CA	95240
BROWDA, DAVID	462 PIONEER DR	LODI	CA	95240
ROBERTSON, BILLY R & SYBOL TR	970 EASY ST	MORGAN HILL	CA	95037
STEVENS, RENE R TR	717 FAIRSITE CT	GALT	CA	95632
INEZS PARTNERS LP	1313 W LOCKEFORD ST	LODI	CA	95240
ARELLANO, JUAN L & FAVIOLA	449 SONORA AVE	LODI	CA	95240
SUAREZ, VALENTE & GLORIA R	500 SONORA AVE	LODI	CA	95240
CALLAHAN, STEVEN & ALINA LYNN	504 SONORA AVE	LODI	CA	95240
FERRY, CHRISTOPHER & CAMI E	508 E SONORA AVE	LODI	CA	95240
PARAMO. SERAFIN P	512 SONORA AVE	LODI	CAI	95240
FLICKINGER, PHILLIP G	516 SONORA AVE	LODI	CA	95240
DOUGHTY, MARLENE J TR	520 SONORA AVE	LODI	CA	95240
WAHLEN, VIRGIL G & J D	524 SONORA AVE	LODI	CA	95240
HUPPERT, INEZ A TR ETAL	1313 W LOCKEFORD ST 540 LN	LODI	CA	95240 95242
GATES, DAVID L & BETTY L TR	E HARNEY	LODI	CA	
HIRSCHKORN, MARGARET G	469 MURRAY ST	LODI	CA	95240
SAMANO, REFUGIO E & FLORENTINA	463 MURRAY ST	LODI	CA	95240
ROUNAVAARA, DEBRA A	532 SONORA AVE	LODI	CA	95240
OREGEL, SALVADOR	536 SONORA AVE	LODI	CA	95240
KAY TAYLER INVESTMENTS II LLC	5466 RIDGEVIEW CIR	STOCKTON	CA	95219

Noe Juarez Luna Appeal of Planning Commission Use Permit Denial 04-14-10

R & P PROPERTIES ETAL	220 HARDING BL	ROSEVILLE	CA	95678
KULP, JEANNETTE TR	518 ST CLAIRE	LODI	CA	95240
PITAMBER, RAMESH & K ETAL	5151 WESTON WAY	GRANITE BAY	CA	95746
GARCIA, JOSE M ETAL	3023 E WOODSON RD	ACAMPO	CA	95220
MARTINEZ, ENGRACIA	20066 N KENNEFICK RD	ACAMPO	CA	95220
MENDEZ, DOLORES	436 E SONORA ST	LODI	CA	95240
BARRETT, YVONNE MAY	501 SONORA AVE	LODI	CA	95240
MOJICA, TERESA ELEANOR	511 E SONORA AVE	LODI	CA	95240
TERRY, JIMMY L & VIRGINIA P	3319 W EUCLID AVE	STOCKTON	CA	95204
SHOAIB, SHAKER	333 MISSION ST	LODI	CA	95240
HUYNH, NGHI NEE	1933 LINDA JEAN LN	MANTECA	CA	95337
HONG, HENRY & NGHI	1933 LINDA JEAN LN	MANTECA	CA	95337
HONG, HENRY & NGHI	1933 LINDA JEAN LN	MANTECA	CA	95337
HUYNH, NGHI NEE	1933 LINDA JEAN LN	MANTECA	CA	95337
YOSEMITE GARDENS APARTMENTS	550 HOWE AVE SUITE 200	SACRAMENTO	CA	95825
YOSEMITE GARDENS	550 HOWE AVE SUITE 200	SACRAMENTO	CA	95825
YOSEMITE GARDENS APARTMENTS	550 HOWE AVE SUITE 200	SACRAMENTO	CA	95825
Noe Juarez Luna	1127 S. Mills Ave	Lodi	CA	95242